XI-HC-78

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA. 1540/00 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH:
Hon'ble Shri Justice L.C. Bhadoo &
Hon'ble Shri Justice Dhirendra Mishra.

CRIMINAL APPEAL No. 1540/ 2000

APPELLANT Lakhmu
S/o Sukhdev,
Aged about 27 years,
R/o Krohebeda,
PoliceStation Amabada
District Bastar.

Versus

RESPONDENT State of Madhya Pradesh.

Shri R.K. Jain counsel for the accused/appellant.

Shri D.K. Gwalare Dy. GA. for respondent/ State.

(ORAL) JUDGMENT
{Dated 15-3-2007}

L.C. Bhadoo,J

The accused/appellant has preferred this appeal against the judgment of conviction and order of sentence dated 6.4.2000 passed by Additional Sessions Judge Kanker in Sessions trial No. 372/1998 whereby he has been held guilty under section 302 of the Indian Penal Code for committing the murder of one Bajai Bai and sentenced to undergo imprisonment for life. However, he has been acquitted of the offence under Section 201 of the IPC. Co-accused Sukhdev has been acquitted of the offences under Sections 302 and 201 of the IPC.

P.T.O.

XI-HC-78

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	2. Case of the prosecution in brief is that on 21.8.1998 at about 6 a.m. in village Krohebeda the accused persons committed the murder of Bajai Bai, wife of Sukhdev and hanged her body with the branch of the tree. On coming to know about this fact PW-4 Sadhu gave merg intimation Ex. P-5 to the Police on 22.8.1998 to the effect that on 20.8.98 his aunt Bajai Bai went for sleep after taking dinner along with her son Monda and daughter Ranay, and at about 5 a.m. on 21.8.1998 she left the house without informing her son or daughter. Thereafter her dead body was found hanging with the branch of a tree in front of his house. When her son Monda was going to cultivate his field he saw the body of his mother. On seeing the body, he returned back. Receiving this report Station House Officer left for the scene of occurrence, after giving notice to the witnesses conducted inquest on the body of Bajai Bai and prepared inquest report Ex. P-1. Investigating Officer prepared the site plan Ex. P-6 and Ex P-6-A. Dead body of Bajai Bai was sent for post mortem examination to Primary Health Centre, Amabeda under Ex. P-8 were Dr. Sandip Dwivedi PW-10 conducted the post mortem examination on the dead body of Bajai Bai and prepared post mortem report Ex. P-8-A in which he opined that the cause of death is cardio respiratory arrest and death was homicidal in nature. At the instance of the accused, one club was recovered under Ex. P-12 and based on the above investigation the Station House Officer registered the First Information Report Ex. P-13 for the commission of the offence under sections 302 and 201 read with section 34 of the IPC.	

P.T.O.

(22)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(3)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3. After completion of the investigation the charge sheet was filed in the Court of Judicial Magistrate First Class, Bhanupratappur who in turn committed the case to the Court of Sessions Judge, Bastar at Jagdalpur from where learned Additional Sessions Judge received the same on transfer for trial.

4. In order to establish the charge against the accused, prosecution has examined 10 witnesses. Statements of the accused persons were also recorded under Section 313 of the Code of Criminal Procedure in which they denied the material appearing against them in the prosecution case and pleaded that they are innocent and have been falsely implicated in the case.

5. Learned Additional Sessions Judge after hearing counsel appearing for both the parties convicted and sentenced the accused/appellant Lakhmu under section 302 of the IPC and acquitted him of the offence under section 201 of the IPC. However, accused Sukhdev has been acquitted of all the charges levelled against him.

6. We have heard learned counsel for the accused/appellant and perused the material available before us including the judgment under challenge.

7. In this case, there is no eyewitness to the incident nor is there any ocular evidence. Case of the prosecution rests only on circumstantial evidence i.e the extra judicial confession made by the accused/appellant.

P.T.O.

XI-HC-78

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(4)

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	8. In order to base conviction on extra judicial confession it has to be seen whether the confession is voluntary and true. PW-1 Monda, the son of Bajai Bai has stated in his evidence that when he saw the dead body of his mother hanging with the branch of tamarind tree, he informed the villagers about the same. At that time, accused Lakhmu was at his residence. Thereafter, villagers gathered there and in their presence accused Lakhmu confessed that he has committed the murder of Bajai Bai by assaulting her with Lathi because she had come to his house and said to him why he had sown the crop in the smaller area for her son. Lakhmu further confessed that after committing the murder of Bajai Bai, her dead body was hanged with the branch of the tree. When inquiry was made from Lakhmu, he said that the deceased used to pick up quarrel with him daily, therefore, he got angry and attacked her. In the cross examination of this witnesses, the defence has not been able to elicit any circumstance which makes the evidence of this witness unreliable or untrustworthy. PW-2 Sonuram has not stated that Lakhmu made extra judicial confession before him. Even the evidence of PW-3 Sonadhar is not to the effect that the accused confessed before him that he assaulted the deceased with lathi. PW-5 Magdu has stated in his evidence that both the accused persons told him that they assaulted Bajai Bai and thereafter hanged her body with the branch of tamarind tree. Therefore, from the above evidence of PW-1 Monda it is established that accused Lakhmu assaulted Bajai Bai with lathi and when she died, her body was hanged with the branch of the tree.	

P.T.O.

(5) (24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

9. Now coming to the nature of offence committed by the accused, PW-10 Dr. Sandip Dwivedi who conducted the post mortem examination on the dead body of Bajai Bai on 25.8.1998 i.e. 4 days after the incident. He has stated in his evidence that the body was at the advanced stage of putrefaction and even the maggots were present in the body. There was injury on the left leg and hand and there was blue hard lump due to tightening of cloth around the neck and the death was on account of cardio respiratory arrest. There may be many reasons for cardio respiratory arrest.

10. As Bajai Bai died on 21.8.1998 and the post mortem was conducted on 25.8.1998 and the doctor has not given any specific reason about the injuries and death of Bajai Bai. No grievous injury or fracture of bone was noticed by him and the conviction of the accused rests merely on extra judicial confession made by him before Monda PW-1, the son of the deceased who has stated in his evidence that when it was inquired from the accused as to why he attacked Bajai Bai, he said that as she used to quarrel with him daily regarding the share of his son in the agricultural field, therefore, he became angry and attacked her with Lathi.

11. Looking to the nature of weapon used and the fact that no grievous injury or fracture was found on the body of deceased and further that the doctor who conducted post mortem examination 4 days after the incident, has not assigned any reason regarding his opinion that Bajai Bai died on account of cardio respiratory arrest.

P.T.O.

(6)
(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Therefore, in these circumstances it cannot be held that the accused attacked the deceased with common intention to cause her death. However, as per the extra judicial confession he attacked the deceased with lathi as a result of which she died and thereafter her body was hanged, therefore, the manner in which he attacked the deceased, leads to an inference that the accused had the knowledge that by attacking with Lathi is likely to cause death of Bajai Bai.

12. For the foregoing reasons the conviction under section 302 of the IPC and the sentence of life imprisonment imposed on the acused/appellant cannot be sustained as at the most the offence against the accused under section 304-II of the IPC is made out.

13. In the result, the appeal partly succeeds. Accused is acquitted of the charge under section 302 of the IPC. Instead, he is convicted for the offence under Section 304-II of the IPC and sentenced to undergo R for 8 years. It is stated that the accused/appellant is in detention since 27.8.1998 and thereby he has already undergone more than 8 years of jail sentence. Thus, he has served out the sentence imposed on him. Therefore, he be set at liberty forthwith if not required in any other case.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

P.T.O.